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Question of the Falkland Islands (Malvinas)

Letter dated 19 September 2012 from the Chargé d'affaires a.i. of the Permanent Mission of Argentina to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith the response of the Argentine Government (see annex) to the letter addressed to you by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations on 27 January 2012 and circulated as document A/66/677, in response to the press release of 3 January 2012 issued on the occasion of the 179th anniversary of the illegal occupation of the Malvinas Islands by the United Kingdom of Great Britain and Northern Ireland (A/66/653).

I should be grateful if you would have this letter and its annex circulated as a document of the General Assembly under agenda item 45, concerning the question of the Malvinas Islands.

(*Signed*) Mateo **Estreme**
Chargé d'affaires a.i.

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Annex to the letter dated 19 September 2012 from the Chargé d'affaires a.i. of the Permanent Mission of Argentina to the United Nations addressed to the Secretary-General

The Argentine Republic has the honour to write to the Secretary-General of the United Nations with reference to the letter addressed to him on 27 January 2012 by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations and circulated as document A/66/677.

The Argentine Republic rejects each and every one of the statements and omissions in the aforementioned letter on the grounds that they attempt to distort and detract from the truth of duly documented historical events.

The content of the British letter is so contradictory that it ends up bearing eloquent testimony to just how untenable is the position of the United Kingdom concerning the question of the Malvinas Islands. The only argument attempted by the United Kingdom to justify its position is the principle of self-determination of peoples. In other words, it claims to have acquired a right by virtue of a principle that, according to the United Kingdom itself, was enshrined in the Charter of the United Nations more than a century after its invasion of the Malvinas Islands in 1833. The United Kingdom also accuses Argentina of a failure to comply with international law, but it does so after having reneged for several decades on its obligation to negotiate a solution to the sovereignty dispute that exists between the two countries with regard to the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas.

There is no way to justify or validate the act of usurpation of the Malvinas Islands by the United Kingdom in 1833, or to claim that it has any lawful effect; this act, from the very moment of the British invasion until now, has been the subject of continuing and repeated protests by Argentina. The stance taken by the United Kingdom in ignoring this reality also reveals its clear lack of a solid basis for what it considers to be its rights on the question of the Malvinas Islands, since, among other facts, it fails to mention the 32 Spanish governors who were stationed on the Islands between 1774 and 1811 and the many actions taken by Argentine Governments from 1810 onward, which demonstrated Argentine sovereignty over the islands, all without any protest whatsoever by the United Kingdom. On the contrary, in 1825 Argentina and the United Kingdom, in their capacity as sovereign States, signed a Treaty of Amity, Commerce and Navigation. At that time, Argentina was publicly and peacefully exercising its sovereignty over the Malvinas Islands, a territory that the United Kingdom recognized as Argentine and that it invaded eight years later.

The Argentine Republic regrets the fact that the United Kingdom, as well as presenting untenable arguments to justify its position, is attempting to distort the Argentine position on the sovereignty dispute and its geographical scope. In that regard, Argentina refers to the expressions of its own position and recalls that the question of the Malvinas Islands, as it is understood by the United Nations, comprises the sovereignty dispute over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas. The sovereignty formula, agreed by both States and applied in numerous bilateral understandings, entails recognition of the existence of a sovereignty dispute between the two countries, as well as the geographical area of that dispute, which necessarily

includes the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas.

Furthermore, the Argentine Republic rejects the attempt of the United Kingdom to disguise its current conduct as some possible interpretation of the principle of self-determination of peoples, which, moreover, does not appear to be the focus of its concerns in other situations even today. That principle, which is a tool for decolonization, could never be invoked in favour of the British settlers who inhabit the islands, without contradicting its intended essence and purpose as enshrined in law. The British attempt to put the wishes of its own population, which it had implanted on the islands, before compliance with international law lacks any rationality and could hardly be interpreted as the result of a good-faith analysis by that country of the situation in which it finds itself concerning the sovereignty dispute. As if that were not enough, the United Nations has shown itself to be opposed to the British position, describing the question of the Malvinas Islands as a special and particular colonial case, and has called, for more than 47 years, for that case to be resolved by negotiations between the two parties, Argentina and the United Kingdom, bearing in mind the interests of the islanders. It should be recalled, moreover, that the General Assembly, in 1985, rejected two British amendments that aimed to introduce the principle of self-determination in the relevant resolution concerning the question of the Malvinas Islands.

The United Nations, through General Assembly resolutions 2065 (XX), 3160 (XXVIII), 31/49, 37/9, 38/12, 39/6, 40/21, 41/40, 42/19 and 43/25, as well as the annual resolutions of the Special Committee on decolonization, the most recent of which was adopted on 14 June 2012, testifies to this by acknowledging the existence of a sovereignty dispute between Argentina and the United Kingdom and requesting that the two parties should resolve it, bearing in mind the interests of the islands' inhabitants.

The Argentine Republic reiterates once again to the United Kingdom its commitment to respect the interests of the islanders, as reflected in the safeguards and guarantees offered to that end and negotiated in the past with the United Kingdom itself, as well as its constitutional commitment to respect the way of life of the islands' inhabitants.

The Argentine Republic notes with concern that the United Kingdom persists in carrying out unilateral activities in the disputed area that are contrary to General Assembly resolution 31/49 and that it refers to an alleged withdrawal of Argentine cooperation with the United Kingdom on various matters related to the South Atlantic, when in fact it was those unilateral acts by the United Kingdom that prevented the continuation of bilateral cooperation on the said matters.

Argentina recalls that cooperation on fisheries issues in the South Atlantic has been prevented by successive unilateral acts by the United Kingdom, such as the establishment of alleged maritime jurisdictions around the Malvinas Islands in 1986 and 1990, and around the South Georgia Islands and South Sandwich Islands in 1993; the sale of fishing licences since 1987; the unilateral lifting in 1994 of the temporary total prohibition of fishing in the area defined in the annex to the Joint Statement of 28 November 1990 and in the area to the west of that area; and the establishment in 2005 of a quota system for fisheries resources in the waters surrounding the Malvinas Islands, a measure that constitutes a form of unlawful and

unilateral long-term disposition of fisheries resources in the disputed maritime areas.

Similarly, Argentina recalls that the decision taken in 2007 to terminate the Joint Declaration on Cooperation over Offshore Activities in the South West Atlantic was attributable to repeated unilateral activities by the United Kingdom that ran counter to the aforementioned Declaration, and that it was taken following a period of reflection that began when both countries acknowledged the existence of a dispute relating to the interpretation of the geographical area to which the Declaration applied.

With regard to the operation of charter flights and the scheduled flight to the Malvinas Islands that LAN Chile operates on a weekly basis, referred to by the United Kingdom in its letter, the Argentine Republic recalls that charter flights were never subject to any agreement and notes that the British Government has failed to take account of the fact that Argentina has repeatedly proposed to the British Government a review of the current situation in relation to air links between mainland Argentina and the Malvinas Islands.

The Argentine Republic deems it necessary to clarify that various measures taken within its domestic jurisdiction are motivated by the need to protect the renewable and non-renewable resources that the United Kingdom apparently means to exploit, showing little regard for the fact that not one country on the continent in which those resources are located accepts it as having undisputed sovereignty over the islands in question. In this context, it is only reasonable that Argentina should continue to take measures aimed at discouraging the illegal exploration and exploitation of those resources. The said measures have been taken by the Argentine Republic in exercise of its sovereign rights and in conformity with international law.

It is also necessary to clarify that all commitments made by the countries members of the Southern Common Market (MERCOSUR) constitute an expression of the sovereign will of each and every one of its member States; such commitments comply with international law and the legislation of each of those countries. In this context, it must be recalled that the measure cited by the United Kingdom in its letter was taken in respect of a flag that is recognized by neither the Argentine Republic nor any of the other countries members of MERCOSUR.

Furthermore, it wishes to reiterate that Decree No. 256/2010 is fully compatible with Argentine sovereignty over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas, and is not an obstacle to freedom of navigation, in conformity with international law, including the United Nations Convention on the Law of the Sea.

The Argentine Government reiterates its invitation to the United Kingdom to resume negotiations in accordance with the mandate of the United Nations and the international community's numerous calls in that regard, in order to arrive at a solution to the sovereignty dispute over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas. Furthermore, the arguments put forward by the United Kingdom in its letter of 27 January 2012 would find better expression in the resumption of sovereignty negotiations between the two countries, which the United Kingdom has been refusing for over 30 years.

The Argentine Republic reaffirms its rights of sovereignty over the Malvinas Islands, South Georgia Islands and South Sandwich Islands and the surrounding maritime areas.